



NEW MEXICO SUPREME COURT

Non-English Speaking Juror Guidelines

(Effective November 15, 2000)

**STATE OF NEW MEXICO SUPREME COURT
NON-ENGLISH SPEAKING JUROR GUIDELINES**

I. INTRODUCTION

II. NON-ENGLISH SPEAKING JUROR ASSISTANCE SERVICES

- A. Scope
- B. Court Interpreters
- C. Jury Summons
- D. Juror Questionnaire
- D. Jury Orientation
- E. Jury Selection
- F. Trial Proceedings
- G. Jury Deliberations

III. COURT INTERPRETATION STANDARDS

- A. Certification and Availability Standards
 - 1. Certified
 - 2. Uncertified
 - 3. Availability
- B. Written Translation Standards
 - 1. Informational Materials
 - 2. Trial Materials
 - 3. Machine Translation
- C. Use and Performance Standards
 - 1. Hours of Service
 - 2. Oath of Interpreter
 - 3. Pre-Interpretation Interview
 - 4. Courtroom Explanation of the Role of the Interpreter
 - 5. Pre-Deliberation Instructions
 - 6. Post-Deliberation Instructions
 - 7. Equipment

IV. COURT INTERPRETATION COSTS

- A. Jury and Witness Fee Fund
- B. Interpreters in Civil Cases
- C. Interpreter Compensation

V. COURT INTERPRETER RECRUITMENT AND TRAINING

- A. Administration
- B. Special Training

I. INTRODUCTION

These guidelines are intended to assist in the efforts of the New Mexico Judiciary to incorporate non-English speaking (NES) citizens into New Mexico's jury system. Because each local court has unique needs and limitations, these guidelines may not be applicable in all courts. Accordingly, these guidelines should not be considered mandatory directives that must be followed in all cases. However, all courts are encouraged to implement the standards set forth below to the fullest extent possible.

II. NON-ENGLISH SPEAKING JUROR ASSISTANCE SERVICES

A. Scope

Article VII, Section 3, of the New Mexico Constitution provides that "[t]he right of any citizen of the state to . . . sit upon juries, shall never be restricted, abridged or impaired on account of . . . inability to speak, read or write the English or Spanish languages." To comply with this constitutional mandate, all courts should strive to incorporate all New Mexico citizens into our jury system regardless of the language spoken by a prospective NES juror. Because most potential NES jurors speak Spanish as their primary language, these guidelines seek to implement statewide standards for accommodating prospective jurors who speak Spanish. However, where financially and logistically possible, all courts are encouraged to implement these guidelines for other languages.

B. Court Interpreters

Upon request by an NES citizen called for jury duty, all courts should appoint a court interpreter to assist the NES juror or prospective juror. In the absence of a specific request for a court interpreter, all courts should independently determine whether a juror or prospective juror is in need of a court interpreter. To make this determination, a court may consider conducting a limited interview of the juror or prospective juror to assess whether the juror or prospective juror is capable of understanding the proceedings in English.

C. Jury Summons

The New Mexico jury summons form should include a statement in Spanish notifying citizens called for jury duty that assistance is available for those who cannot understand English. The Spanish notice should also provide a telephone number that prospective NES jurors may call for further assistance. The Administrative Office of the Courts (AOC) is responsible for producing jury summonses for local courts that will include an appropriate Spanish notice. The AOC will coordinate with local courts to ensure that an adequate number of trained court personnel are available to respond to calls for assistance from prospective NES jurors.

D. Juror Questionnaire

The AOC is responsible for preparing a Spanish version of the juror questionnaire used by local courts. The AOC is also responsible for distributing copies of the Spanish version of the juror questionnaire to all local courts. All local courts should provide a Spanish version of the juror questionnaire upon request from any prospective juror. All local courts should also make arrangements to have court personnel available to provide an oral, Spanish translation of the juror questionnaire and to otherwise assist prospective NES jurors who cannot read Spanish.

E. Jury Handbook and Orientation

The AOC is responsible for preparing a Spanish version of the official juror handbook contained in the New Mexico Rules Annotated. See Rule 5-903 NMRA 2000. The AOC is also responsible for distributing copies of the Spanish version of the official jury handbook to all local courts. To the extent that local courts may provide additional English language jury orientation materials to prospective jurors, those courts should also make arrangements to have court personnel available to provide oral, Spanish translations available when needed. Alternatively, courts are encouraged to produce written translations of local jury orientation materials.

F. Jury Selection

All courts should make arrangements to have a court interpreter available for prospective NES jurors during the jury selection process. Upon arriving for jury selection, the court should introduce the court interpreter appointed to assist prospective NES jurors and advise prospective NES jurors that they should alert the interpreter if they have any questions during the process. The transcript of proceedings need not include the foreign language statements of the court interpreter or prospective NES juror, provided that the transcript clearly indicates when a court interpreter was used to interpret for a prospective NES juror.

Although a court interpreter may provide interpretation services for more than one prospective NES juror at a time, a court interpreter ordinarily should not be used to interpret for both a litigant and a prospective NES juror. However, when the litigant and his or her attorney can communicate in the same non-English language for confidential communications, the court interpreter may be used to otherwise interpreter for both the litigant and the prospective NES juror. Subject to availability, courts are encouraged to avoid using the same court interpreter for jury selection and trial in the same case.

Prospective NES jurors are subject to peremptory challenges and challenges for cause the same as any other prospective juror. However, a prospective NES juror may not be challenged or excused simply because that juror is unable to read, write, or speak the English language. Moreover, the trial court should not excuse a prospective NES juror who asks to be excused simply because he or she cannot read, write, or speak the English language. In the event that a court interpreter will not be available to provide interpretation services at trial for a prospective NES juror who would otherwise be selected to serve on the jury, the trial court judge may either postpone the trial until a court interpreter is available or excuse the juror from service for that trial only, provided that the prospective NES juror is recalled for jury selection for the next scheduled trial.

G. Trial Proceedings

All courts should make arrangements to have a court interpreter available for all NES jurors during all trial proceedings. The transcript of proceedings need not include the foreign language statements of the court interpreter or the NES juror, provided that the transcript clearly indicates when a court interpreter was used to interpret for an NES juror. Although a court interpreter may provide interpretation services for more than one NES juror, a court interpreter ordinarily may not provide interpretation services for both a litigant and an NES juror or for a witness and an NES juror. However, when the litigant and his or her attorney can communicate in the same non-English language for confidential communications, the court interpreter may be used to otherwise interpret for the litigants, witnesses, other court participants, and NES jurors. Subject to availability, courts are encouraged to avoid using the same court interpreter for the trial and for jury deliberations.

H. Jury Deliberations

All courts should make arrangements to have a court interpreter available for all NES jurors during all jury deliberations. One court interpreter may provide interpretation services for more than one NES juror at a time during deliberations. To the extent that documentary exhibits are submitted to the jury for consideration during deliberations, the court interpreter assigned to assist NES jurors may provide an oral translation of the written material. With respect to jury instructions submitted to the jury, courts are encouraged to draft written, Spanish translations of the jury instructions with the assistance of a court interpreter. Alternatively, the court interpreter assigned to assist NES jurors during deliberations may provide an oral translation of the jury instructions.

III. Court Interpretation Standards for NES Jurors

When providing the court interpretation services to NES jurors and prospective jurors as outlined above, all courts should strive to meet the following standards.

A. Certification and Availability Standards

1. Certified

All courts should use certified court interpreters to assist NES jurors during all jury selection, trial, and deliberation proceedings. Certification is governed by the provisions of the Court Interpreters Act, NMSA 1978, §§ 38-10-1 to -8 (1985), as administered by the AOC. Except as otherwise provided below, an uncertified court interpreter should only be used if the requirements of NMSA 1978, Section 38-10-3(B) (1985), are met. In the event that a court must use an uncertified court interpreter, the court should consider briefly examining the uncertified court interpreter to establish the qualifications of the interpreter.

2. Uncertified

All courts may use uncertified court interpreters to assist NES jurors and prospective jurors in completing the juror questionnaire. Uncertified court interpreters may also be used during the jury orientation process.

3. Availability

All courts should maintain a list of locally available certified and uncertified court interpreters and submit an updated copy of that list to the AOC by May 1st of each year. For those courts that do not have an adequate number of locally available certified or uncertified court interpreters available to assist NES jurors and prospective jurors, the local court administrator or chief judge should coordinate with the AOC to compile a list of certified and uncertified court interpreters who are available from other areas. The AOC should also assist local courts in the training of local court personnel to assist NES jurors and prospective jurors with the juror questionnaire, jury orientation, and with questions arising outside the context of formal court proceedings.

B. Written Translation Standards

1. Qualification and Orientation Materials

The AOC will provide all courts with a written, Spanish translation of the juror questionnaire, which should be translated by a certified court interpreter. To the extent that local courts may provide jurors with other orientation materials concerning local information, local courts should contact the AOC for assistance in producing a written translation of these materials. Alternatively, local courts should make arrangements to have local court personnel available to orally translate such orientation materials.

2. Trial Materials

Written materials that are submitted to the jury for consideration during trial or jury deliberations should be orally translated by a certified court interpreter or translated in writing by a certified court interpreter. If a certified court interpreter is not available, the court may use an uncertified court interpreter to orally translate written materials if the requirements of Section 38-103(B) are met.

3. Machine Translation

A number of services are available on the Internet and elsewhere that provide free or low-cost translation of written materials from English into a number of other languages. Because machine translation may not be accurate, courts should not use machine translation for written materials that are to be used in formal court proceedings, such as jury instructions or documentary exhibits. Although courts may consider using machine translation for other informational and local orientation materials submitted to jurors and prospective jurors, all courts are cautioned against relying exclusively on machine translation without human verification of the accuracy of a machine translation.

C. Use and Performance Standards

Because of the demanding and sensitive nature of the services provided by court interpreters appointed to assist NES jurors and prospective jurors, all courts are encouraged to use and instruct court interpreters in accordance with the following standards.

1. Hours of Service

All courts should strive to limit the amount of time that a court interpreter interprets for an NES juror or prospective juror to avoid court interpreter fatigue. Ideally, two court interpreters should be used as a team to provide interpretation services, and each interpreter should avoid interpreting for more than 30-45 minutes without a rest period. Because this may not be logistically feasible in all circumstances, every court should remain sensitive to the risk of court interpreter fatigue. Whenever a court interpreter suspects that the quality of interpretation may become compromised because of fatigue, the interpreter should advise the trial court judge of the need for a period of rest.

2. Oath of Interpreter

Before a court interpreter begins to provide interpretation services for an NES juror or prospective juror during jury selection or trial, the trial judge should administer an oath to the court interpreter in accordance with NMSA 1978, Section 38-10-8 (1985).

3. Pre-Interpretation Interview

Prior to providing interpretation services for an NES juror or prospective juror, with the knowledge and permission of the court, the court interpreter should briefly interview the NES juror or prospective juror to enhance the effectiveness of the interpretation by becoming familiar with the speech patterns and linguistic traits of the NES juror or prospective juror.

4. Courtroom Explanation of the Role of the Interpreter

Prior to the commencement of proceedings, the trial court judge should explain the role of the court interpreter to those present in the courtroom by explaining that the interpreter was appointed by the court to assist jurors or prospective jurors who do not understand English. The judge should also explain to the jury that the interpreter is only allowed to interpret and that the jurors may not ask the interpreter for advice or other assistance. The judge should also explain that, for those English speaking jurors who may understand the non-English language spoken by the court interpreter, the jurors should disregard what they hear the interpreter say and rely solely on the evidence presented in English.

5. Pre-Deliberation Instructions

Prior to excusing the jury for deliberations, the trial judge should, on the record, instruct the court interpreter who will be providing interpretation services for an NES juror that the interpreter should not interfere with deliberations in any way by expressing any ideas, opinions, or observations that the interpreter may have during deliberations but should be strictly limited to interpreting the jury deliberations. The trial judge should also ask the court interpreter to affirmatively state on the record that the interpreter understands the trial judge's instructions.

6. Post-Deliberation Instructions

Following jury deliberations but before the jury's verdict is announced, the trial judge should ask the court interpreter on the record whether the interpreter abided by his or her oath to act strictly as an interpreter and not to participate in the deliberations. The interpreter's identity and answers should be made a part of the record. At the request of a party to the litigation, the jurors may also be questioned to the same effect. The trial judge should also instruct the court interpreter not to reveal any aspect of the jury deliberations after the case is closed.

7. Equipment

With the assistance of the AOC, all courts should make arrangements to provide equipment for use by a court interpreter who will be providing interpretation services for NES jurors. The AOC will develop standards and seek funding to acquire adequate equipment for use by court interpreters throughout the state who will be providing interpretation services for NES jurors and prospective jurors. The equipment should allow interpreters to provide interpretation services for multiple persons with minimum disruption of the court proceedings. To the extent that the AOC and local courts are unable to provide court interpreters with interpretation equipment, all court should assist court interpreters with the logistical arrangements for providing interpretation services whenever possible. Accordingly, prior to jury selection or trial proceedings, court personnel should identify the number of NES jurors or prospective jurors scheduled to appear in court. This information should be provided to the appointed court interpreter so that the interpreter can make arrangements for the appropriate equipment and seating arrangements. The interpreter should obtain the prior approval of the trial court if special equipment and seating arrangements are needed. The bailiff should inform counsel if any seating changes have been made to accommodate NES jurors or prospective jurors.

IV COURT INTERPRETATION COSTS

A. Jury and Witness Fee Fund

All costs associated with administering these guidelines and providing services for NES jurors and prospective jurors should be paid from the Jury and Witness Fee Fund. To the extent that such costs are initially incurred at the local court level, local courts may seek reimbursement from the Jury and Witness Fee Fund.

B. Interpreters in Civil Cases

The costs for a court interpreter to provide interpretation services to an NES juror or prospective juror in civil cases should be paid by the court through the Jury and Witness Fee Fund.

C. Interpreter Compensation

Court interpreters appointed to provide interpretation services for NES jurors or prospective jurors should be paid at a fixed rate in accordance with the approved fee schedule established by the AOC. However, all courts are free to employ a certified interpreter on a full-time basis or under contract at a mutually agreed upon compensation rate.

V. COURT INTERPRETER RECRUITMENT AND TRAINING

A. Administration

The AOC is be responsible for the recruitment and training of court interpreters to provide interpretation services for NES jurors and prospective jurors.

B. Special Training

The AOC, in consultation with the Court Interpreters Advisory Committee, see NMSA 1978, § 38-10-4 (1985), will develop supplemental training standards for court interpreters who will provide interpretation services for NES jurors and prospective jurors. These standards should be incorporated into the general certification process for all new court interpreters.

APPENDIX B

SECOND JUDICIAL DISTRICT

P.O. BOX 488 ALBUQUERQUE, NM 87103-0488

THOMAS J. RUIZ, CLERK OF THE DISTRICT COURT PHONE: (505) 841-7419

STATE OF NEW MEXICO COUNTY OF BERNALILLO IN THE DISTRICT COURT

JURY SUMMONS ACTON, GARY MR

915 WASHINGTON ST

ALBUQUERQUE 87110

JUROR NO.: 0001 JUROR SSN: 527-28-7678

JURY SUMMONS

This summons requires you to appear for jury duty. If you cannot understand English or require other assistance, please call xxx-xxxx within 5 days of the date you receive this summons.

PETIT JURY

IN ACCORDANCE WITH THE LAW, SEC. 38-5-1 AND 38-5-19 NMSA 1978, YOU HAVE BEEN SELECTED FOR JURY DUTY AND YOU ARE ORDERED TO APPEAR FOR QUALIFICATION AND ORIENTATION ON THE

10TH DAY OF MAY, 2000, AT 1:00 P.M. 415 TIJERAS NW, COURTROOM 306, ALBUQUERQUE, NM

ANY PERSON WILLFULLY FAILING TO REPORT AT THE TIME STATED ABOVE MAY BE PUNISHED FOR CONTEMPT OF COURT.

Complete the enclosed forms and return immediately in the enclosed envelope. Failure to return the forms prior to summons date may result in delays and inconvenience to you.

WITNESS THE HONORABLE ALBERT S. MURDOCH, JUDGE OF THE SECOND DISTRICT, AND THE SEAL OF THE COURT THIS 5TH DAY OF APRIL, 2000.

PLEASE READ ALL ENCLOSED INSTRUCTIONS AND INFORMATION CAREFULLY. RETAIN THIS PAGE FOR YOUR RECORDS.